

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

requirements to restrict should have two aspects: (1) the reasons why the inventions are independent/distinct, and (2) reasons for insisting upon restriction (MPEP 808).

As indicated above, a restriction requirement must show that a serious burden on the examiner will result if restriction is not required. A serious burden may be established by showing separate classification, separate status in the art, or different field of search.¹ The present restriction requirement has provided no evidence of a serious burden on the examiner. To the contrary, the restriction requirement has provided identical status and classification data for all groups.²

Because no evidence has been presented showing a burden on the examiner, a prima facie case for restriction cannot have been established. For this reason alone, this requirement is traversed.

In addition or alternatively, a case for restriction has not been established as sufficient reasons indicating why the inventions are patentably distinct have not been presented.

Applicant recognizes that in the particular case of product and process, such inventions are distinct if the product claimed can be made by another process materially different than the claimed process.

It is not believed that distinctness has been established as the process relied upon in the restriction requirement appears not workable.

The restriction requirement has divided the claims into a group I (claims 1-7) drawn to a product, and a group II (claims 8-20) drawn to a process of making. The rejection recites the following process of making in support of the restriction requirement.

In claim 8, substituting the oxidization of the silicon substrate layer with
“silicidization of an upper oxide layer using RTA (rapid thermal anealling)”

¹ See MPEP §803.

² See the Restriction Requirement, dated 6/27/02, Page 2, which indicates that each group is drawn to a semiconductor device including memory cells, and has identical classification.

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It is first noted that Applicant's claim 8 recites oxidizing a semiconductor substrate and not a silicon substrate. Second, it is not understood how an oxide layer can be silicidized. Conventional silicide includes a binary compound of silicon with a more electropositive element or group.³ Thus, conventional silicide is formed with silicon and a metal compound or the like. For example, a silicide layer may be formed by evaporating a thin metal layer on a silicon substrate. It is not understood how a step of "silicidization of an upper oxide layer using RTA" can be accomplished. Clarification is requested.

Because the process relied upon to show distinctness appears unworkable in the conventional sense, distinctness has not been established.

It is believed that the requirements for restriction have been traversed and the application may now be examined on the merits. Such action is respectfully requested.

Respectfully Submitted,

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³ Merriam Webster's Collegiate Dictionary.